

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF NEW YORK**

KENNETH SKERIANZ,) Bk. No. 1-11-50182
)
Plaintiff,) Adv. Proc. CEC1-12-01275-cec
)
v.) Chapter 7
)
UNITED STATES OF AMERICA)
(INTERNAL REVENUE SERVICE))
)
Defendant.)
)

STIPULATION OF DISMISSAL WITHOUT PREJUDICE

The debtor, and the United States of America, by their undersigned attorneys, stipulate to the dismissal of the complaint in the above adversary proceeding, without prejudice, pursuant to Fed.R.Civ.P. 41(a)(1), applicable under Bankruptcy Rule 7041, in accordance with the following understanding. The United States of America (and its agency the IRS) shall suspend collection of the debtor's 2007 joint income tax liability until the Court determines the disposition of the funds that the Trustee recently cited as a basis to reopen the case. The United States will file a secured claim treating those funds as collateral pursuant to 11 U.S.C. § 506(a).¹ To the extent that the liability is not fully satisfied from whatever portion of those funds is distributed to the IRS by the Trustee under 11 U.S.C. §§ 724 or 726, the United States shall offer the debtor the option of electing to pay the remainder of the liability by using post-petition funds to buy out the value of the tax lien for 2007. To the extent that the debtor does not elect to buy out any remainder of the tax lien for 2007 with post-petition funds, the United States shall first collect the balance of the 2007 tax liabilities by levying on the debtor's IRA, which is listed on Schedule C - Property Claimed as Exempt as having a value of \$11,000 and only thereafter shall seek to

¹ The IRS's secured claim will also treat as collateral one half of the equity in the debtor's residence (the other half of which also secures the 2007 liability because of the character of the liability as joint with the debtor's spouse). The debtor is not hereby stipulating that the property may be used to satisfy liabilities of the debtor alone and assumes that it has been effectively abandoned by the Trustee's prior no-asset report.

enforce its prepetition tax lien against the equity in the residence that the debtor owns in tenancy by entirety with his wife, Brunilda Skerianz.

The debtor's adversary proceeding, accordingly, is dismissed without prejudice, and the parties shall bear their own costs and expenses. (The complaint, and therefore this stipulation, do not address liabilities for years subsequent to 2007 or the debtor's trust fund recovery penalty assessments). This stipulation is understood to be self-effectuating under Rule 41(a)(1) but the parties have no objection if the Court prefers to so order it.

Except for the 2007 federal income tax liability assessed against Debtor and the related federal tax lien, neither this adversary proceeding nor this stipulation is applicable or otherwise prejudices any party's claims and/or defenses as to, involving, or in connection with, any other federal income tax or other federal tax liabilities, including, without limitation, any alleged trust fund recovery penalty assessments against Debtor for any other tax periods.

FOR THE DEBTOR:

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CERTIFICATE OF SERVICE

I certify that on October 5, 2012, I electronically filed the foregoing STIPULATION OF DISMISSAL WITHOUT PREJUDICE with the Clerk of the Bankruptcy Court using the CM/ECF system, which sent notification of such filing to the following:

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The above parties may access this filing through the Court's system.

/s/ Alan Shapiro
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